NEWSLETTER
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ERNAKULAM BRANCH

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Chairman's Message

Dear Colleagues and Friends in Profession,

Covid-19, the pandemic is going strong and spreading its net all over the world. The number of affected people is increasing day by day and the death rates are going up. In India too, the situation is not different. The situation in some of our nearby states is alarming. It seems, we were complacent during the initial lock down period, not initiating any preventive action for the future eventualities. Predictions are that the peak point in India is yet to come. We have to be utmost vigilant and take every precaution to contain this deadly virus. As professionals and responsible individuals, we have to be the role model for others in taking all the precautions and preventive measures to break the chain, as suggested by the Health Authorities and Governments, in our Offices, Home and Life. Covid will be there, with us, in our life, as a way our life, so long a vaccine is invented.

Our institute, ICAI is in the forefront to support all the Government initiatives to contain the pandemic. ICAI has donated Rs.21 crores to the PM Care Fund to support the Government in their efforts to prevent the spread of the corona virus. ICAI has initiated self-service portal and digital learning hub for the members and students for better, timely learning and services. Several webinars on general and professional topics for empowering the members and updating the knowledge of the members and students were also telecast. The emphasize was for skill development of the members to attain professional excellence to adapt to and take advantage of the possibilities and opportunities under the changing economic scenario and emerging new world order.

Inspite of Covid-19 initiated lock down continuing, during the month of May, members were busy with bank audits. At the branch level, we could undertake webinars on "Updates on Companies Act and Companies Amendment Bill 2013" by CA Rengarajan and a "Mega Online Career Counselling Programme" with the support of CCM CA Babu Abraham Kallivayalill, RCM CA Jomon K George and Senior Member CA Venugopal C Govind. The highlight of the month was a live webinar on Yoga "For Well Being and Success" organized in association with Isha Foundation, for members and public. A national level webinar on "Investment for Future" was also organized with Department of Commerce, St Teresa's College Ernakulam for students and public, wherein CA Shreekumar P Menon and myself were the resource persons. Apart from other online regular classes, during the month, a new batch for Virtual Foundation Course was started.

Apart from the regular features, from this month onwards, we wish to publish new articles of interest from members in the website and e-news letter. As a beginning we have included article on "Input Tax Credit on Exempt Goods" by Past Chairman CA. Lukose Joseph and article on "The Profession " by Past Chairman CA. P T Joy. Moreover, as a mark of respect to members who left us for abode, we will be publishing their photos with brief details and also members who made professional, public or social achievements. It is requested members to send worthy articles for publishing in website as well in e-news letter. It is informed that we strictly reserve the right to publish any article or information received from members.

"When you feel like hope is gone, look inside you and be strong and finally see the truth that hero lies inside you". By Singer and Actress Mariah Carey

Friends, in difficult times like this, when the world is facing a pandemic that has changed life for millions, hope can be a powerful source of reassurance. Believe and Hope that "we shall overcome this".

With warm regards and love

CA Roy Varghese
Chairman,
ICAI Ernakulam Branch

Break the chain
കൈവിടാതിരിക്കാം... കൈ കഴുകു...

Reported Judicial Decisions

Direct Tax

CA. P.M. Veeramani FCA

Statute: Income Tax Act
Sec.10(4)(ii) – Interest on NRE account
Decision in favour of : Revenue
Title : Baba Shankar Rajesh vs ACIT
Citation: 180 ITD 160
Bench: ITAT Chennai

Where assesse who was a non-resident earlier, stayed in India for relevant financial year for 283 days for taking up employment, he would become resident in India as per FEMA: thus he would not be entitled to exemption u/s 10(4)(ii) on the interest in his NRE deposits

Statute: Income Tax Act
Sec.11 – Facilities hired from corporates
Decision in favour of : Assessee
Title : Devki Devi Foundation vs DIT (E)
Citation: 180 ITD 417
Bench: ITAT Delhi

Charitable trust having retained control and supervision of hospital run by it, entering into agreement for availing services of corporates for running hospital does not disentitle from exemption under section 11 or face cancellation under 12AA(3)

Statute: Income Tax Act
Sec.40b – Allowable when profit estimated
Decision in favour of : Assessee
Title : Mayasheel Construction vs DCIT
Citation: 77 ITR Trib SN 8
Bench: ITAT Delhi

Interest and remuneration to working partners is allowable as deduction even after estimation of net profit of the frim as a percentage of gross receipts

Statute: Income Tax Act
Sec.46A – Capital gain on buy back
Decision in favour of : Revenue
Title : Acciona Wind Energy Private Ltd vs DCIT
Citation: 185 DTR Trib 280
Bench: ITAT Bangalore

Section 45 and 46A operate in different fields. Sec.45 is applicable regarding transfer of a capital asset whereas section 46A is applicable in respect of consideration from any company for purchase of its own shares. Since there is no requirement in section 46A that there has to be a transfer of shares, section 47(iv) is not applicable in connection with the issue covered by section 46A. Further the there are two shareholders in the company, one being its parent and the other another associate concern and such associate concern is not holding the share as nominee of parent company and hence the claim that it is a wholly owned subsidiary is not acceptable.

Statute: Income Tax Act
Sec.73 – No distinction for delivery based
Decision in favour of : Assessee
Title : Lohia Securities Ltd vs DCIT
Citation: 180 ITD 1 TM
Bench: ITAT Kolkatta

Where assesse , a sharing broking company, treated entire activity of purchase and sale of shares, which comprised of both delivery based and non-delivery based trading as one composite business and accordingly claimed set of loss incurred in delivery based trading against profit derived from derivative trading, same was to be allowed

Statute: Income Tax Act

Sec.80G(5) – Approval cannot be denied
Decision in favour of : Assessee
Title : Sabtera Foundation vs CIT (E)
Citation: 77 ITR Trib 296
Bench: ITAT Chandigarh

Approval cannot be denied only for the reason that the trust was formed by another company for complying with the CSR requirements especially because registration u/s 12A was already granted and no doubt raised about charitable objects of the assesse or fulfillment of conditions for 80G approval

Statute: Income Tax Act
Sec.143(2) – Notice by affixture
Decision in favour of : Assessee
Title : Tourism India Management Enterprises Private Ltd vs DCIT
Citation: 77 ITR Trib 311
Bench: ITAT Delhi

Notice by way of affixation was only to be served when the correct address was not available or the assesse had refused to accept the service of notice. Since notice was never issued to the correct address, affixation will not be valid and consequently assessment framed u/s 143(3) was void ab initio

Statute: Income Tax Act
Sec.194 H – Credit card commission
Decision in favour of : Assessee
Title : PCIT vs Hotel Leela Venture Ltd
Citation: 420 IR 385
Bench: Bombay HC

Charges collected by bank for providing credit card services at the establishment did not amount of commission warranting TDS under section 194 H. No disallowance attracted

Statute: Income Tax Act
Sec.194 I – Lounge services at airport
Decision in favour of : Assessee
Title : CIT vs Jet Airways India Ltd
Citation: 420 ITR 399
Bench: Bombay HC

Payment made by airline company for use of airport lounge facilities by its customers while in transit does not fall within the meaning of rent attracting TDS under section 194 I since such premises was not in the exclusive usage of the assesse or its customers . However the same could fall under the section 194 C which the assesse has complied with

Statute: Income Tax Act
Sec.251(1)(a) – CIT(A) has to dispose appeal on merits only
Decision in favour of : Asseessee
Title : Deekay Gears vs ACIT
Citation: 77 ITR Trib 150
Bench: ITAT Mumbai

Even when the assesse has filed application for withdrawal of appeal, CIT(A) has to consider the appeal and dispose on merits. CIT(A) not justified in dismissing appeal in limine based on assesse application

Statute: Income Tax Act
Sec.263 – Failure to convert limited scrutiny
Decision in favour of : Revenue
Title : Baby Memorial Hospital Ltd vs ACIT
Citation: 77 ITR Trib Coch 484
Bench: ITAT Cochin

Even in cases of limited scrutiny, AO is duty bound to make prima facie enquiry as to whether there is any other item which requires examination and in the assessment, the potential escapement of income thereof exceeded Rs.10 lakhs. AO having failed to convert limited scrutiny into a complete scrutiny, is an erroneous order calling for revision under section 263.

Statute: Income Tax Act
Sec.271(1)(c) – Income declared in survey
Decision in favour of : Assessee
Title : PCIT vs Shree sai Developers
Citation: 186 DTR 105
Bench: Gujarat HC

Assessee having declared undisclosed income during survey filed return including such and said return accepted by AO in assessment u/s 143(3), there is no filing of inaccurate particulars attracting penalty

Statute: Income Tax Act
Sec.271G – No penalty when no specific defect
Decision in favour of : Assessee
Title : Procter & Gamble Home Products (P) Ltd vs DCIT
Citation: 180 ITD 194
Bench: ITATMumbai

TPO levy of penalty stating that sufficient documents prescribed under rule 10D was not maintained by the assesse but the notice did not mention any specific document / record which was not maintained. Unless and until a specific defect is pointed out in the documents, penalty could not be levied

Statute: Income Tax Act
Sec.276C,277-No action when quantum of penalty is reduced
Decision in favour of : Assessee
Title : K M Mammen vs DGIT
Citation: 186 DTR 78
Bench: Madras HC

Once penalty for concealment stood reduced by CIT(A), section 279(1A) applied and prosecution under 276 C and 277 could not be launched.

RECENT ADVANCE RULINGS UNDER GOODS AND SERVICES TAX JUDICIAL DECISIONS ON INDIRECT TAXES

CA.P.J.Johney FCA

RECENT ADVANCE RULINGS UNDER GST

Statute: Goods and Service Tax
Decision in favour of: Assessee
Title: M/S SQUARE ONE HOMEMADE TREATS

SHRI.B.G.KRISHNAN IRS&
SHRI.B.S TYAGARAJABABU B.SC,LLM

Citation: Advance Ruling No. KER/66/2019
Bench/Court: Authority for Advance Ruling, Kerala

Applicant engaged in purchase/sale of food products (cakes, cookies, ready to eat homemade packed food etc) procured from other dealers, all items sold are pre-packed & it does not have any kitchen facility to cook food at the premises, sought advance ruling whether resale of such products falls under restaurant services.

Noted that in restaurant, food & drinks are prepared, served to customers whereas in present case already cooked food is served from the counter and only by giving a mere facility to customers to consume such foods in premises does not suffice enough to make it a restaurant service.

Held that resale of food & bakery products cannot be classified as restaurant service.

Statute: Goods and Service Tax
Decision in favour of: Revenue
Title: ARAVALI POLYART (P) LTD.

Sh. Rakesh Kumar Sharma
Dr. Preetam B. Yashvant

Citation: Appeal No. RAJ/AAAR/APP/10/2018-19
Bench/Court: APPELLATE AUTHORITY FOR ADVANCE RULING,RAJASTHAN

The applicant is running sweetshop and a restaurant in two distinctly marked separate parts of the same premises, separate accounts and billings for the two types of businesses were also maintained. Advance Ruling sought on whether the supply of sweets, namkeens, cold drinks and other edible items from a sweetshop which also runs a restaurant is a supply of goods or a supply of service.

AAR held that the above supply shall be treated as a supply of service and sweetshop will be treated as an extension of restaurant. The applicant further filed an appeal before the Appellate Authority for Advance Ruling (AAAR).

AAAR observed that as per the CGST Act, 2017, 'composite supply' consists of two or more taxable supplies of goods or services or both which are naturally bundled and supplied in conjunction with each other. The supply of food to customers in a restaurant or as a takeaway from the restaurant counter which is being billed under restaurant sales head should fall under 'composite supply' of restaurant services.

However, goods supplied to customers through sweetshop counter have no direct or indirect nexus with restaurant services. Anyone can come and purchase any item of any quantity from the counter without visiting the restaurant. These sales are completely independent of restaurant activity and will continue even when the restaurant is closed.
AAAR held that in case of sale of food items from restaurant, GST rates on restaurant service will be applicable on all such sales and ITC will not be allowed. In case of sale of those items from sweetshop counter it will be treated as supply of goods and GST rates of the respective items being sold will be levied and ITC will be allowed on such supply.

Statute: Goods and Service Tax
Decision in favour of: Assessee
Title: KALYAN JEWELLERS INDIA LIMITED

Ms.Manasa Gangotri Kata,
Thiru Kurinji Selvaan

Citation: Order No. 52/ARA/2019
Bench/Court: AUTHORITY FOR ADVANCE RULINGS, TAMIL NADU

Applicant engaged in business of manufacturing & trading of jewellery products introduced the facility of prepaid instruments (PPI) popularly called as gift vouchers/ gift cards

sought ruling on GST applicability on issue of such vouchers and if yes then what would be the time of supply and rate of tax.

AAR held that these PPI's issued are vouchers as defined under CGST/TNGST Act, 2017, are a supply of goods under GST provisions and GST is applicable.

If vouchers are specific to any particulars goods specified against it, time of supply (TOS) of such vouchers/gift cards/ gift vouchers shall be date of issue of vouchers whereas if these vouchers are redeemable against any goods bought then it shall be date of redemption of voucher.

Rate of tax shall be 12% in case of paper based gift voucher classifiable under CTH 4911 & 18% for gift cards classifiable under CTH 8523.

JUDICIAL DECISIONS ON INDIRECT TAXES

Statute: Goods And Services Tax
Decision in favour of: Assessee
Title: GURDEEP SINGH SACHAR V UNION OF INDIA (BOMBAY HIGH COURT)

Ranjit More, J.

Citation: Criminal Public Interest Litigation Stamp No. 22 of 2019
Bench/Court: BOMBAY HIGH COURT

The petitioner filed PIL to initiate criminal prosecution against the Company Dream 11 Fantasy Pvt. Ltd for conducting illegal operations of gambling/betting/wagering activities in the name of Online Fantasy Sports Gaming, which attracts penal provisions of Public Gambling Act, 1867.

As observed by the High Court in online fantasy sports game conducted by the Company, participants create virtual teams comprising of playerssimilar to real life teams. The participants compete within a time limit against such virtual teams created by other participants. The winners are decided based on points scored, using statistical data generated by the real-life performance of the players. The participants do not bet on the outcome of the match. The result of the fantasy game contest does not depend on winning or losing of any particular team in any real game on any given day.

Held that success in Dream 11 game arises due to superior sports knowledge, judgment and attention of the participants. Therefore, the Online Fantasy Sports Gaming is a 'game of skill' and not any 'game of chance'.
Thus held by HC, that Online Fantasy Sports gaming of the company are not gambling services, hence, 18% GST rate shall be applicable.

Statute: Goods and services Tax
Decision in favour of: Applicant
Title: SHABNAM PETROFILS PVT. LTD v UNION OF INDIA

MR.JUSTICE A.C. RAO

Citation: Special Civil Application No. 16213 Of 2018
Bench/Court: GUJARAT HIGH COURT

The applicant engaged in manufacturing & selling of textile goods filed special civil application before HC in order to challenge the provisions of CGST Act,2017, notifications and circulars which prohibits refund of accumulated ITC on account of inverted duty structure.

The HC observed that the said notification as amended by the subsequent notification provided that accumulated ITC on inward supplies received upto 31st July, 2018 would lapse.

HC held that no inherent power could be inferred from the provisions of refund of CGST Act 2017 which could empower the CG to lapse unutilized ITC on account of inverted duty structure & hence such ITC would not lapse.

Statute:Goods and Services Tax
Decision In Favour Of : Petitioner
Title: M/S. PANDURANGA STONE CRUSHERS V UNION OF INDIA

M SEETHARAMA MURTHI AND J.UMA DEVI

Citation:I.A NO.1 OF 2019 IN W.P. NO. 8662 OF 2019.
Bench/Court: HIGH COURT OF ANDHRA PRADESH

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in the W.P., the High Court may be pleased to permit the petitioner to rectify GSTR-3B statements for the months of August and December 2017 and January and February 2018 manually subject to the outcome of the writ petition, pending disposal of WP.No. 8662/2019 on the file of the High Court.

The Court while directing issue of notice to the Respondents herein to show cause why this petition should not be complied with, made the following order. (The receipt of this order will be deemed to be the receipt of notice in the case).

Petitioner is permitted to rectify GSTR-3B statements for the months of August and December, 2017 and January and February, 2018 manually subject to the outcome of the writ petition. It is made clear that if the petitioner submits a rectified statements for the above purpose, the respondents shall process the same in accordance with the procedure established by law.

Statute: Goods and services Tax
Decision in favour of: Assessee
Title: SANDEEP PATIL vs UNION OF INDIA AND OTHERS

RANJIT MORE J&
SMT. BHARATI H. DANGRE, JJ.

Citation: Criminal Application No. 8 of 2019
Bench/Court: BOMBAY HIGH COURT

The Assessee sells goods from DFS located in International Airport at Mumbai to international passenger. Such goods are mainly imported or procured from SEZ units in India and are sold before they cross customs barriers. The assessee had challenged the order passed by the DC denying the refund of ITC accumulated on account of services received by duty free shops at the airport.

Export means 'taking goods out of India to a place outside India' as observed by HC. Supply by assessee from DFS to the outbound passenger constitutes export. Warehoused goods supplied before clearance for home consumption is neither supply of goods nor supply of services. Sales from DFS to arriving passengers are sales from the customs

area as the goods have neither crossed customs frontier nor cleared for home consumption by DFS and, hence, customs duty and IGST are not payable by DFS.
The HC, thus, sets aside the order passed by the DC and held that the sale of goods from DFS located at International Airports constitutes 'export of goods' & hence, assessee is entitled to get refund of input tax credit.

Statute: Goods And Services Tax
Decision in favour of: Applicant
Title: BAI MUMBAI TRUST v SUCHITRA

S.J. KATHAWALLA, J.

Citation: Court Receiver's Report No. 213 Of 2017 in Commercial Suit (L) No. 236 of 2017
Bench/Court: BOMBAY HIGH COURT

Issue raised whether GST is applicable on services or assistance rendered by the Court receiver appointed by the Court under order XL of CPC.

Court observed that schedule III provides that services provided by any court or tribunal established under any law is neither a supply of goods nor supply of services. Court Receiver should implement orders of the court and functions under the supervision and direction of the Court. Hence, office of the Court Receiver is an establishment of the High Court through which the orders issued by the Court are given effect to.

Therefore, the services of the Court Receiver are to be considered as services provided by any Court. Accordingly, the fees or charges paid to the Court Receiver are not liable to GST. The Honorable High Court held that GST cannot be levied or recovered on services provided by the Court Receiver.

Statute: Goods and services Tax
Decision in favour of: Applicant
Title: M/S. AMIT COTTON INDUSTRIES v PRINCIPAL COMMISSIONER OF CUSTOMS

HONOURABLE MR.JUSTICE J.B.PARDIWALA
HONOURABLE MR.JUSTICE A.C. RAO

Citation: Special Civil Application No. 20126 of 2018
Bench/Court: GUJARAT HIGH COURT

Applicant running a cotton ginning mill exported goods and claimed refund of IGST paid on such goods which was denied by revenue authorities on the ground of excess availement of DDB.

High Court held that refund could be withheld only when request was received by the jurisdictional Commissioner regarding the same or when the goods were exported in violation of the Customs Act, 1962 as determined by proper officer of Customs.

There was neither any provision nor any circular or instruction under GST law which would restrict IGST refund for reason that higher rate of drawback was claimed. The High Court held that the applicant was entitled to claim IGST refund in respect of goods exported and directed revenue authorities to immediately sanction the refund amount along with 7 per cent interest from date of shipping bills till date of actual refund.

Statute: Goods And Services Tax
Decision in favour of: Applicant
Title: DIRECTOR GENERAL OF ANTI-PROFITEERING v M/S NESTLE INDIA LTD (NATIONAL ANTI-PROFITEERING AUTHORITY)

Sh.B.N Sharma, Chairman ,SH. J.C Chauhan and SH. Amand Shah

Citation:70/2019
Bench/Court: BEFORE NATIONAL ANTI-PROFITEERING AUTHORITY

The respondent, subsidiary of Nestle group, engaged in manufacturing and sale of various food products including coffee, noodles, chocolates, etc the rates on several those products were reduced from 28% to 18% w.e.f. 15.11.2017 and from 18% to 12% w.e.f. from 25.01.2018. Applicant suo moto deposited around INR 16 crore in the Consumer Welfare Fund before any notice of investigation of profiteering was issued. In the meanwhile investigation was ordered by NAA against the respondent to be conducted by DGAP.

As per the DGAP's report, The base prices of 300 stock keeping units (SKU) increased by the respondent which were impacted by the rate reduction due to which anti-profiteering provisions gets attracted. Respondent has passed the benefit of rate reduction at aggregate level of SKU or at product level instead of passing on every SKU so that benefit could reach to every buyer of that SKU. Hence, the methodology adopted by the respondent was incorrect. The total profit made by the respondent was determined at around INR 89 crores.

The NAA directed the respondent to reduce the prices proportionately and to deposit the balance profit in the Consumer Welfare Fund.

Statute: Goods And Services Tax
Decision in favour of: Petitioner
Title: WATERMELON MANAGEMENT SERVICES v THE COMMISSIONER, CENTRAL TAX, GST DELHI (EAST) & ANR.

HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

Citation: W.P.(C) 3274/2020
Bench/Court: HIGH COURT OF NEW DELHI

Provisional Attachment -- The petitioner challenged the provisional attachment order dated 05th March, 2020 issued by respondent to the petitioner's bankers. The petitioner submitted that in the absence of any notice issued under Section 74 of the Act, 2017, no order of attachment under Section 83 of the Act, 2017 could have been passed by the respondents.

Held that:-The Hon'ble High Court directed the respondent to treat the present writ petition as an objection under Rule 159(5) of the CGST Rules, 2017 and decide the same within three working days.

Statute: Goods and services Tax
Decision in favour of: Respondant
Title: MAHADEO CONSTRUCTION CO. v THE UNION OF INDIA

MR. JUSTICE H. C. MISHRA

MR. JUSTICE DEEPAK ROSHAN

Citation: W.P.(T) No. 3517 of 2019
Bench/Court: THE HIGH COURT OF JHARKHAND

Section 50 and 79 of the CGST Act, 2017 — Interest and Recovery Proceedings Thereof —The petitioner, a partnership firm, registered under the CGST Act. The petitioner submitted that in GSTN Portal, due date for filing of GSTR 3B Return for the month of February, 2018 and March, 2018 was reflecting as 31st March 2019. The petitioner filed its monthly return for the month of February, 2018 and March, 2018 within the due date as reflected in GSTN Portal. The respondent directed the petitioner to make payment of interest on the ground of delay in filing of GSTR-3B Return for the months of February and March, 2018. The respondent further initiated recovery proceedings under Section 79 of the Act for the aforesaid amount of interest by issuing notice to the petitioner's Banker. The petitioner submitted that if the amount of interest is not admitted, the same requires determination through an adjudication process to be initiated as per the detailed provisions contained under Section 73 of the Act. The moot question before the Court are as to (i) whether interest liability under Section 50 of the Act can be determined without initiating any adjudication process either u/s 73 or 74 of the Act in the event of an assessee raising dispute towards liability of interest? (ii) Whether recovery proceedings u/s 79 of the Act can be initiated for recovery of interest u/s 50 of the Act without initiation and completion of the adjudication proceedings under the Act?Held that:- The Hon'ble High Court allowed the writ by quashing the order issued by the respondent for interest and notice for recovery proceedings under Section 79 of the Act to the Banker. The Hon'ble Court directed the respondent to initiate appropriate adjudication proceeding either under Section 73 or 74 of the Act against the petitioner and determine the liability of interest, if any, in accordance with law after giving due opportunity of hearing to the petitioner.

Transitional Credit — In the instant case, All the four writ petitions seek identical relief in the nature of a writ of Mandamus directing the respondents to permit the petitioners to avail input tax credit of the accumulated CENVAT credit as of 30th June, 2017 by filing declaration Form TRAN-1 beyond the period provided under CGST Rules. Held that— since all the Petitioners have filed or attempted to file Form TRAN-1 within the aforesaid period of three years they shall be entitled to avail the Input Tax Credit accruing to them. They are thus, permitted to file relevant TRAN-1 Form on or before 30.06.2020. Respondents are directed to either open the online portal so as to enable the Petitioners to file declaration TRAN-1 electronically, or to accept the same manually.

Statute : Goods and services Tax
Decision in favour of: Petitioner
Title: BHARTI AIRTEL LIMITED & ORS V. UNION OF INDIA

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

Bench/Court: IN THE HIGH COURT OF DELHI

The paramount grievance of the Petitioner is that during the period from July, 2017 to September, 2017 (hereinafter referred to as 'the relevant period'), the Petitioner in its monthly GSTR- 3B recorded the ITC based on its estimate. As a result, when the Petitioner had to discharge the GST liability for the relevant period, the details of ITC available were not known and the Petitioner was compelled to discharge its tax liability in cash, although, actually ITC was available with it but was not reflected in the system on account of lack of data. The exact ITC available for the relevant period was discovered only later in the month October 2018, when the Government operationalized Form GSTR-2A for the past periods. Thereupon, precise details were computed and Petitioner realized that for the relevant period ITC had been under reported. The Petitioner alleges that there has been excess payment of taxes, by way of cash, to the tune of approximately Rs. 923 crores. Held that— the rectification of the return for that very month to which it relates is imperative and, accordingly, we read down para 4 of the impugned Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred. Accordingly, we allow the present petition and permit the Petitioner to rectify Form GSTR-3B for the period to which the error relates, i.e. the relevant period from July, 2017 to September, 2017. We also direct the Respondents that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim made therein and give effect to the same once verified.

Statute: Goods And Services Tax
Decision in favour of: Assessee
Title: SKH SHEET METALS COMPONENTS PVT LTD v UNION OF INDIA & ORS.

MR. JUSTICE MANMOHAN
MR. JUSTICE SANJEEV NARULA

Citation: CM APPL. 11279/2020
Bench/Court :HIGH COURT OF DELHI

Section 140 of the CGST Act, 2017— Transitional Credit -- The petitioner filed application for early hearing on the ground that the issue of transitional credit in the present case is covered by the judgment in the case of Micromax Informatics Limited Vs. UOI and Ors., W.P. (C) 196/2019 & CM APPL. 965/2019 dated 5th May, 2020 passed the Division Bench of this Court. The petitioner submitted that in the said judgment credit of erstwhile laws has been allowed to be transitioned to GST regime on or before 30th June, 2020.
Held that:-The Hon'ble High Court directed to issue notice and to list the case for final disposal on 29th May, 2020

Statute: Goods and services Tax
Decision in favour of: Assessee
Title:TEAM HR SERVICES PRIVATE LTD. v UNION OF INDIA & ANR

MR. JUSTICE RAJIV SAHAI ENDLAW
MS. JUSTICE SANGITA DHINGRA SEHGAL

Citation: W.P.(C) 13114/2019
Bench/Court: HIGH COURT OF DELHI

Section 54 of the CGST Act, 2017—Refund—The petitioner submitted that the respondent passed an order for rejecting the refund. The instant order was telephonically informed to the Chartered Accountant of the petitioner and a copy thereof also forwarded to the petitioner but has been returned unserved. The Petitioner submitted that inspite of repeated orders, the refund has not been granted to him till date. The respondent submitted that he has a counter affidavit to the writ petition ready but could not file the same owing to the lockdown prevalent
Held that:- The Hon'ble High Court held that the respondent is permitted to email the counter affidavit along with annexure to this Court. The petitioner may file a rejoinder to the counter affidavit within two weeks, also through email. List the writ petition for hearing on 10th June, 2020.

Input Tax Credit on Exempt Goods

Credit of wrongly charged tax

on exempted goods or services

CA Lukose Joseph
CA Anil P Nair

Allowing Input tax credit is fundamental to all value added tax mechanisms. Whether trade and Industry get 100% benefit of such tax credit in Central Goods and Services Tax Act, 2013 is what we examine here especially taking input credit of tax on exempted goods.

As per the "Statement of Objects & Reasons" in the Constitutional Amendment (122nd) Bill, 2014 one of the primary objectives behind the introduction of GST is to enable seamless flow of input tax credit. Now a question before us is whether under GST this principle of seamless credit is implemented or is it always practical?

If it is possible so in letter and spirit, **whether credit of output tax charged wrongly by supplier on exempted goods can be claimed as input credit by recipient?**

Expert opinions vary, but were largely favorable being there is no restriction or condition in section 16 which deals with "eligibility and condition for taking input tax credit"

Section 16

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed** and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) **Rule 36 prescribes the condition and restriction of input tax credit.

A plain reading of section 16 with Section 49 and Rule 36 has no restriction in availing credit of output tax charged wrongly by supplier on exempted goods.

In Central Excise Act, there are lot of legal decisions including for example VG Steel industries v CCE(2011) 271 ELT 508(P &H HCDB) that if supplier had paid excise duty (though not payable) buyer is eligible to avail input credit.

However later unconditional exemption of goods from duty was made compulsory. Hence validity of such decisions is to be retested.

CIR NO. 940/01/2011-CX, DT. 14/01/2011

It has been clarified (under central excise act) that if assessee still pays duty on goods which are unconditionally exempted, the amount paid is not duty. Hence, the buyer will not be eligible for cenvat credit of such amount. Further the person paying excise duty will not be eligible for cenvat credit of duty paid on inputs in view of Section 11D of Central Excise Act**(CIR NO. 940/01/2011-CX, DT. 14/01/2011)**

As per the circular in view of the specific bar provided under sub-section (1A) of Section 5A of the Central Excise Act, 1944, the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods and he cannot avail the CENVAT credit of the duty paid on inputs.

It is further clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as “CENVAT Credit” to the downstream units, as the amount paid by the assessee cannot be termed as “duty of excise” under Rule 3 of the CENVAT Credit Rules, 2004.

Section 5A(1A) in the Central Excise Act, 1944

For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.

The credit is denied on the basis of above section and an equivalent clause exists under GST, which is **explanation to section 11 of CGST Act** which reads as follows

For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.
Now it can be concluded that GST paid wrongly on exempted goods is claimed as input credit, same may be interpreted as a tax planning measure or evasion.

Justification for the circular

Suppose a manufacturer producing exempted goods is using taxable goods and is having value addition of 10 percent. For his customer who is again paying tax on his output, the entire credit is lost. To avoid such a situation exempted goods may be wrongly charged with tax to transfer benefit to another one. Here revenue interprets this as erroneous tax planning or evasion. Exemption given was unconditional, hence no duty can be charged and no question arises about any input credit.
Here, even if no full justification for denial of input credit can be made, same is a necessary evil to control tax planning equivalent to evasion.
P S : Exemption is not always boon but becomes bane, well, sometimes!

The Profession

CA. P.T. Joy

The ample availability of time at disposal during the Covid 19 locked down period prompted me to memorise our profession of the past, evaluate of the present and presume about the future. We all will nod our heads and agree that the profession in the past was wearing a mantle of glory, was highly respected, was value driven and all the stake holders were looking upto us and eager to listen from. In the course of this journey where we started losing this? Answer to this question needs some amount of introspection and analysis.

We being professional service providers, the main component of cost is man power cost. In the past, the cost , availability and quality of man power, generally,were not the major concerns to us. The cost of man power was less and it was available in plenty with quality. Those days our employees were more attached to us and since other job opportunities were limited, they often continued with us for years and sometimes for decades. In this journey unknowingly and unintentionally what was happening was, since manpower cost and availability were not the concerns, we were charging less from our clients, who were mostly, close to us as our well wishers. To be precise, for a reasonable less amount of revenue generated only less amount of cost was to be incurred. One question remains to be answered on this is who were the ultimate financial beneficiaries of this scenario. The answer is- we were not.

As years passed, cost of man power has gone up, availability has become less and quality of manpower remained a notion very far from reality. Skills, knowledge and technical competency required for execution of our professional work multiplied many fold. Also regulators started imposing multitude of accountabilities on us, despite we being members of a regulatory body. In some of the organisations, which has been our clients for long time, the second generation came to the driving seat. So the personal client relations of the past has become more of formal client relations of the new age. For other new clients coming to us, they became more demanding as to our availability and time taken for delivery of service.

At this phase we slowly started charging moderately for our professional assignments based on our level of involvement and time spent by our personnel to face the above referred challenges. The Committee for Members in Practice (CMP) of ICAI has also come out with recommended minimum scale of fees for our assignments based on category of cities in which we are located. Though this is not cent percentage adhered to by all the members, indirectly it has instilled some confidence and augmented us to charge a fee.

Certain companies and corporations invite tenders and expression of interest from us for many assignments like internal audits, GST related works and consultancy etc.The instruction by ICAI that we should not respond to such tenders, if it is our exclusive domain and minimum fees is not quoted by them, should be cogently informed to all our ICAI members and enforced in

the real sense. Rarely, for some of the government companies and corporations internal audit fee etc many years back and now remains the same because after every three years or so when they invite quotations these are received for the existing amounts.
The ICAI guideline on responding to tenders by our members is worth reproducing here:

Guideline No. 1-CA(7)/03/2016 – dated 07th April, 2016: In exercise of the powers conferred on it under Item (1) of Part II of the Second Schedule of the Chartered Accountants Act, 1949, the Council of the Institute of Chartered Accountants of India hereby issue the following guidelines for compliance by the members of the Institute -

(i) A member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services. However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.

(ii) This Guideline shall come into force with immediate effect.

Concurrent audit of certain banks are also remaining as low paid assignments. Factually they decide scope of work, man power deployment from our side and remuneration . We are left with the option to either accept or not to accept the assignment.

The publicity and awareness created by ICAI about UDIN among stake holders, within a short span, has to be done for recommended minimum scale of fees also. This fact is uninformed to many stake holders including governmental agencies. Once the existence of a minimum scale of fees as recommended by ICAI is made known to all the stake holders and public at large, there can be a huge change in the manner in which it is viewed upon. If there are no technical impediments, the ICAI can think of making this scale of fees mandatory.

It is almost certain that many of the functions currently performed by CAs could soon be performed by sophisticated technology. To overcome this situation we all have to reinvent ourselves with a mix of new and enhanced competencies. At this crucial phase what is important is the speed with which we will be able do it. More number of professionals and assistants will no longer be required in audit teams with systems able to audit and process large volumes of data with stupendous speed and accuracy.

Artificial intelligence, Block Chain technology, cloud computing, Internet of things and cyber security etc are going to impact our profession in a big way in the ensuing years. Among these, Artificial intelligence is going to be the most disruptive technology in our lives. Now a days we book a cab or order a pizza without any human intervention and the driver or delivery boy will give us the service. Time is not too far away that there will be a driverless car coming to pick you up or a drone coming to our doorstep and delivering the pizza. When there is a technology revolution all set to take place we cannot be mere spectators, but we will have to swim along with it. The inspired second generation who are more tech savvy will be better equipped to face this revolution. So if there are outdated systems, practices and methods followed and practiced by us, this is high time that we should jettison those things and be ready to receive the technology revolution with a smile on our face.

Fond Rememberance

CA. T P Peter (89 years)
M.No. 4352
Passed away on 28th May,2020

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